

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHRISTOS SOUROVELIS, *et al.*,

Plaintiffs,

vs.

CITY OF PHILADELPHIA, *et al.*,

Defendants.

Civil Action No. 2:14-cv-04687-ER

Assigned to the Honorable Judge Robreno

Special Management Track

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF THEIR MOTION THAT THE
OCTOBER 14 HEARING REGARDING FINAL APPROVAL BE CONDUCTED VIA
ELECTRONIC/REMOTE MEANS**

As the Court is aware, the coronavirus pandemic still sweeps across America. Philadelphia itself has experienced over 37,000 coronavirus cases and 1,800 deaths. Indeed, the City’s own website states that there is currently a “high risk of community transmission” in Philadelphia.¹ It is for this reason that the Court has acted to limit face-to-face interactions within the courthouse. For instance, the Court has recently issued an order delaying the impaneling of any civil juries until November 2020 at the earliest.² An earlier standing order from May 29, 2020, affirmed that “the Court will continue to use video conferencing and telephone conferencing for court proceedings to the greatest extent possible.”³ And, as the Court’s website makes clear, the Court is fully equipped from a technical perspective to

¹ Phila. Dept. of Public Health, Coronavirus Disease 2019 (COVID-19), <https://www.phila.gov/programs/coronavirus-disease-2019-covid-19/> (last visited Oct. 1, 2020).

² Standing Order - In Re: Fifth Extension of Adjustments to Court Operations Due to the Exigent Circumstances Created by COVID-19, <https://www.paed.uscourts.gov/documents/standord/StandingOrder-Extension5.pdf> (stating that “[a]ll civil jury selections and jury trials scheduled to begin before November 2, 2020, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.”) (Aug. 31, 2020).

³ Standing Order - In Re: Second Extension of Adjustments to Court Operations Due to the Exigent Circumstances Created by COVID-19 <https://www.paed.uscourts.gov/documents/standord/StandingOrder-2ExtAdjCtOpCOVID-19.pdf> (May 29, 2020).

accommodate video conferencing.⁴ See also *United States v. Roeder*, 807 F. App'x 157, 160 (3d Cir. 2020) (reversing denial of self-surrender postponement “[i]n light of the exigent circumstances surrounding the COVID-19 pandemic and the timing of our ruling”). Similarly, the First Judicial District of Pennsylvania, Philadelphia Court of Common Pleas—one of the parties in this matter—has ordered that all non-jury civil trials be conducted via remote means.⁵

Plaintiffs’ Counsel ask that the Court employ similar alternative means for conducting the final fairness hearing, as they each have medical conditions that increase the risk they face from COVID-19. “People with pre-existing medical conditions . . . face a particularly high risk of dying or suffering severe health effects should they contract the disease.” *United States v. Rodriguez*, 451 F. Supp. 3d 392, 394 (E.D. Pa. 2020) (granting motion for a reduction of prison sentence based on COVID-19 risk). Lead Counsel Robert Frommer, for instance, suffers from obstructive sleep apnea, which numerous reported studies have indicated creates an additional risk of harm should he contract the coronavirus.⁶ The same is true for Plaintiffs’ Counsel Robert Peccola, who also has sleep apnea. And Local Counsel David Rudovsky is similarly subject to an increased risk of harm from coronavirus due to his age, now 77.⁷ Due to this increased risk of harm to themselves and their families, both Messrs. Frommer and Peccola have consistently avoided attending in-person business and social events where they could contract the virus. A face-to-face hearing on October 14 would expose them to risk, not just at the hearing itself, but

⁴ Electronic Courtrooms, <https://www.paed.uscourts.gov/services/electronic-courtrooms> (last visited Oct. 1, 2020).

⁵ First Judicial District, [Notice To The Bar: Protocol for Non-Jury Trials During the COVID-19 Judicial Emergency](https://www.courts.phila.gov/pdf/notices/2020/NTB-Trial-Division-Civil-Protocol-for-Non-Jury-Trials-During-the-COVID-19-Judicial-Emergency_.pdf), https://www.courts.phila.gov/pdf/notices/2020/NTB-Trial-Division-Civil-Protocol-for-Non-Jury-Trials-During-the-COVID-19-Judicial-Emergency_.pdf (last visited Oct. 1, 2020) (indicating that non-jury trials “will be conducted via remote technology”).

⁶ COVID-19: Patients with sleep apnea could be at additional risk, <http://outbreaknewstoday.com/covid-19-patients-with-sleep-apnea-could-be-at-additional-risk-47480/> (last visited Oct. 1, 2020);

⁷ Older Adults, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html#:~:text=Risk%20for%20Severe%20Illness%20Increases%20with%20Age&text=Similarly%2C%20people%20in%20their%2060s,those%20aged%2085%20or%20older> (last visited Oct. 1, 2020).

also in their travels from the Washington D.C. area where they reside to Philadelphia. The same is true for David Rudovsky, who has conducted his law practice and teaching entirely by remote connections, and who, because of his age, has scrupulously avoided contacts in closed settings.

Given the health threat that an in-person hearing would pose, both to Plaintiffs' counsel and others in attendance, Plaintiffs respectfully request that the Court modify its July 15 order so that the hearing set for October 14 be conducted via electronic/remote means.

Dated: October 5, 2020

Respectfully submitted,

INSTITUTE FOR JUSTICE

By: /s/ **Robert Frommer**

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**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2020, a true and correct copy of Plaintiffs' Memorandum in Support of Their Motion That the October 14 Hearing Regarding Final Approval Be Conducted Via Electronic/Remote Means was served upon the following counsel of record via the ECF system:

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Additionally, I HEREBY CERTIFY that on this 5th day of October, 2020, a true and correct copy of the foregoing was served upon the following via first class mail:

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